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HOUSE BILL 406

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO FINANCIAL TRANSACTIONS; PROVIDING FOR THE
LIMITATION OF FEES AND REGULATION OF TITLE LOANS; PROHIBITING
LENDERS FROM MAKING TITLE LOANS UNDER A LICENSE ISSUED PURSUANT
TO THE NEW MEXICO SMALL LOAN ACT OF 1955; ENACTING THE TITLE
LOAN ACT; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
through 15 of this act may be cited as the "Title Loan Act".

Section 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
Title Loan Act:

A. "consumer" means a person who enters into a
title loan product agreement and receives the loan proceeds in
New Mexico;

B. "division" means the financial institutions

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1 division of the regulation and licensing department;

2 C. "director" means the director of the division;

3 D. "fair market value" means the value of the motor
4 vehicle as determined by a nationally recognized general index
5 of motor vehicle values approved by the division;

6 E. "installment loan" means a loan that is to be
7 repaid in a minimum of twelve successive substantially equal
8 payment amounts to pay off a loan in its entirety with a period
9 of at least one year to maturity;

10 F. "license" means a permit issued under the
11 authority of the Title Loan Act to make title loan products and
12 collect charges strictly in accordance with the provisions of
13 that act at a single place of business. It shall constitute
14 and shall be construed as a grant of a revocable privilege only
15 to be held and enjoyed subject to all the conditions,
16 restrictions and limitations contained in the Title Loan Act
17 and rules promulgated by the director;

18 G. "licensee" means a person to whom one or more
19 licenses have been issued pursuant to the Title Loan Act upon
20 the person's written application electing to become a licensee
21 and consenting to exercise the privilege of a licensee solely
22 in conformity with the Title Loan Act and the rules promulgated
23 by the director under that act and whose name appears on the
24 face of the license;

25 H. "motor vehicle" means a vehicle that is self-

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1 propelled or is propelled by electric power obtained from
2 batteries;

3 I. "payment plan" means a loan to pay the
4 outstanding balance of a title loan, with a repayment schedule
5 of ten successive substantially equal amounts to pay off a loan
6 in its entirety with a period of ten months to maturity;

7 J. "person" includes an individual, copartner,
8 association, trust, corporation and any other legal entity;

9 K. "simple interest" means a method of calculating
10 interest in which the amount of interest is calculated based on
11 the annual interest rate disclosed in the loan agreement and is
12 computed only on the outstanding principal balance of the loan;

13 L. "title lender" means a person engaged in the
14 business of entering into title loan product agreements with
15 consumers;

16 M. "title loan" means a loan transaction secured by
17 a motor vehicle, but does not include credit extended to
18 finance the purchase of a motor vehicle or an installment loan;

19 N. "title loan product" means a title loan or
20 payment plan; and

21 O. "title loan product agreement" means a written
22 agreement between a consumer and a title lender evidencing a
23 title loan product.

24 Section 3. [NEW MATERIAL] LICENSURE OF TITLE LENDERS.--

25 A. It is unlawful for any person to act as a title

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1 lender unless the person has been licensed by the division
2 pursuant to the Title Loan Act to make title loan products.

3 B. All title loan product agreements entered into
4 by a title lender that are in violation of the title lender's
5 license requirements are void, and the title lender has no
6 right to collect, receive or retain any interest, fees or
7 charges.

8 C. A consumer who enters into a title loan product
9 agreement with a title lender who is in material violation of
10 the title lender's obligations under Sections 6 through 11 of
11 the Title Loan Act shall not be bound by the terms of the
12 agreement, except that the consumer's only liability is for the
13 return of the principal sum borrowed, which shall be repaid
14 within a reasonable time after a finding is made that the title
15 loan product is void and after the title lender releases any
16 lien on the motor vehicle and returns the certificate of title.

17 D. Each license shall specify the location in New
18 Mexico of the specific title lender's office to which it
19 applies and must be conspicuously displayed in that office.

20 E. Before a title lender's office location may be
21 changed or moved by a title lender, the division shall approve
22 the change of location by mailing the title lender an updated
23 license for that office.

24 F. Each title lender shall post a surety bond in
25 the amount of fifty thousand dollars (\$50,000) for each office

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1 location, not to exceed a maximum of two hundred fifty thousand
2 dollars (\$250,000) per title lender. A title lender shall
3 notify the division in writing of any claim made on the title
4 lender's bond. When an action is commenced on a title lender's
5 bond, the director may require the title lender to file a new
6 bond. A surety bond shall continue in effect for two years
7 after the title lender ceases operation in New Mexico. A
8 surety bond shall be available to pay damages and penalties to
9 consumers harmed by a violation of the Title Loan Act.

10 G. More than one place of business shall not be
11 maintained under the same license, but the division may issue
12 more than one license to the same title lender if the title
13 lender is otherwise qualified.

14 H. Each title lender shall keep books, accounts and
15 records that will enable the division to determine if the title
16 lender is complying with the provisions of the Title Loan Act
17 and shall maintain any other records required by the division.
18 The division may examine the records at any reasonable time.
19 The records shall be kept for seven years following the last
20 entry on a title loan product and shall be kept according to
21 generally accepted accounting procedures that include an
22 examiner being able to review the record keeping and reconcile
23 each title loan product with documentation maintained in the
24 consumer's title loan product file records.

25 Section 4. [NEW MATERIAL] EXEMPTIONS.--A banking

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1 corporation, savings and loan association or credit union
2 operating under the laws of the United States or of a state
3 shall be exempt from the requirements of the Title Loan Act.

4 Section 5. [NEW MATERIAL] APPLICATION--BOND--
5 INVESTIGATION AND FEE--AGENT FOR SERVICE OF PROCESS--ISSUANCE
6 OR DENIAL OF LICENSE--RENEWAL.--

7 A. Application for a license and any annual license
8 renewal shall be in writing under oath and in the form
9 prescribed by the director, shall give the exact location where
10 the business is to be conducted and shall contain such other
11 relevant information as the director may require, including
12 identification of all parties in interest and the names and
13 addresses of all the partners, officers, directors, trustees
14 and beneficiaries of any trust and of such principal owners and
15 members as will provide the basis for an investigation and
16 findings necessary under the Title Loan Act. The application
17 shall also include a statement accepting the license, if
18 granted, as a privilege to be enjoyed and exercised only under
19 all the terms and conditions of the Title Loan Act and under
20 all rules of the director promulgated pursuant to that act.
21 The applicant shall pay an application fee of one thousand
22 dollars (\$1,000) to the director at the time of making
23 application for an original license.

24 B. The application shall be accompanied by, and
25 every licensee shall at all times maintain on file with the

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1 director, a written power of attorney appointing a person who
2 is a resident of this state as the licensee's agent for service
3 of all judicial or other process or legal notice and notices
4 provided for by the Title Loan Act, unless the licensee has
5 appointed an agent for service of process under another statute
6 of this state. In case of noncompliance with this subsection,
7 service of process, including service of all notices provided
8 for in the Title Loan Act, may be made on the manager or person
9 in charge of the registered office or place of business of the
10 licensee, and the director may by order suspend the license
11 pending compliance with this section.

12 C. Upon the filing of an application, whether it is
13 an original or a renewal, the director shall investigate the
14 facts concerning the application and the requirements provided
15 in this section.

16 D. An applicant for a license, upon written notice
17 to do so by the director, shall, within twenty days after
18 service of the notice, furnish in writing, under oath, to the
19 director all additional information required by the director
20 that may be relevant or, in the opinion of the director,
21 helpful in conducting the investigation.

22 E. Failure to comply with the director's
23 requirement for supplemental information or the willful
24 furnishing of false information is sufficient grounds for
25 denial of license.

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1 F. False or misleading information willfully and
2 intentionally furnished to the director prior to the issuance
3 of any license is grounds for suspension or revocation of any
4 license in accordance with the procedures for suspension or
5 revocation of license in the Title Loan Act.

6 G. The director shall grant or deny each complete
7 application for an original license within sixty days of
8 receipt of the application, fees and all the required
9 information, unless the period is extended by written agreement
10 between the applicant and the director.

11 H. The director shall enter an order granting the
12 application, file the director's findings and, upon payment of
13 the license fee pursuant to the fee schedule set by the
14 director, issue and deliver a license to the applicant if the
15 director finds that:

16 (1) the financial responsibility, character
17 and general fitness of the applicant for an original license
18 and of the individual members and beneficiaries of the
19 applicant, if the applicant is a copartnership, association or
20 trust, and of the officers and directors of the applicant, if
21 the applicant is a corporation, are such as to command the
22 confidence of the public and to warrant belief that the
23 business will be operated lawfully, honestly, fairly and
24 efficiently within the declared purposes and spirit of the
25 Title Loan Act; and

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1 (2) the applicant has the surety bond required
2 in Section 3 of the Title Loan Act.

3 I. If the director does not make the findings
4 enumerated in Subsection H of this section, the director shall
5 enter an order denying the application, notify the applicant of
6 the denial and retain the application fee. Within thirty days
7 after the entry of such an order, the director shall prepare
8 written findings and shall deliver a copy to the applicant.

9 J. A written application for license renewal shall
10 be filed on or before March 31 of each year, and thereupon the
11 director shall investigate the facts and review the files of
12 examinations of the applicant made by the director's office and
13 of complaints filed by borrowers, if any. The director shall
14 deliver a renewal license to the applicant if the director
15 finds that:

16 (1) no valid complaints of violations or
17 abuses of the Title Loan Act or of the rules of the director
18 promulgated under that act have been filed;

19 (2) examinations of the affairs of the
20 applicant indicate that the business has been conducted and
21 operated lawfully and efficiently within the declared purposes
22 and spirit of the Title Loan Act; and

23 (3) the financial responsibility, experience
24 and general fitness and character of the applicant remain such
25 as to command the confidence of the public and to warrant the

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1 belief that the business will continue to be operated lawfully
2 and efficiently within the purposes and spirit of the Title
3 Loan Act.

4 K. If the director does not make the findings
5 enumerated in Subsection J of this section, the director may
6 grant a temporary extension of the license not exceeding sixty
7 days pending a hearing. The director shall enter an order
8 fixing a date for a hearing on the application; shall notify
9 the licensee of the hearing, specifying the particular
10 complaints, violations or abuses or other reasons for the
11 director's contemplated refusal to renew the license; and shall
12 afford to the applicant an opportunity to be heard. At the
13 hearing, the director shall produce evidence to establish the
14 truth of the charges of violation or other grounds specified in
15 the notice, and the applicant shall be accorded the right to
16 produce evidence or other matters of defense. If after the
17 hearing the director finds that the complaints of violations or
18 other grounds specified in the notice are not well-founded, the
19 director shall issue the renewal license. If the director
20 finds that the complaints of violations or other grounds are
21 well-founded, the director shall enter an order denying the
22 renewal application and notify the applicant of the denial,
23 returning the renewal license fee tendered with the
24 application. Within thirty days after the entry of such an
25 order, the director shall prepare written findings and shall

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1 deliver a copy of the findings to the applicant. The order
2 shall be subject to review in the district court pursuant to
3 the provisions of Section 39-3-1.1 NMSA 1978. The court in its
4 discretion and upon proper showing may order a temporary
5 extension of the license pending disposition of the review
6 proceedings.

7 L. In connection with the determination of fitness
8 and character of an applicant pursuant to the provisions of
9 this section, the fact that the applicant or licensee is a
10 member of or interested financially in, connected or affiliated
11 with, controls or is controlled by or owns or is owned by other
12 corporations, partnerships, trusts, associations or other legal
13 entities engaged in the lending of money whose policies and
14 practices as to rates of interest, charges and fees and general
15 dealing with borrowers are questionable or would constitute
16 violation of the general usury statutes of this state or of the
17 Title Loan Act shall be given consideration and weight as the
18 director determines.

19 M. At the time of issuance of an original license
20 and each annual license renewal, the licensee for each licensed
21 office shall pay to the director a license fee for the period
22 covered by the license.

23 N. The director shall determine fees for licensure
24 that shall be at least five hundred dollars (\$500), but not
25 more than one thousand dollars (\$1,000), plus an additional

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1 seventy-five cents (\$.75) for each one thousand dollars
2 (\$1,000) or fraction thereof of loans outstanding as of
3 December 31 next preceding, as shown on the applicant's annual
4 report. In the event that the application for annual renewal
5 of the license is delinquent, the licensee shall also pay a
6 delinquency fee as determined by the director of at least ten
7 dollars (\$10.00) per day for each day the licensee is
8 delinquent in filing the application for renewal.

9 O. The director shall establish fees for
10 examination of a title lender, which shall not exceed one
11 hundred fifty dollars (\$150) per day, or fraction of a day of
12 examination.

13 P. A licensee, by accepting a license that is
14 issued or renewed or by continuing to operate a licensed office
15 under the Title Loan Act, shall by such action be deemed to
16 have consented to be bound by the lawful provisions of that act
17 and all lawful requirements, regulations and orders of the
18 director promulgated or issued pursuant to any authorization
19 granted in that act.

20 Section 6. [NEW MATERIAL] REQUIREMENTS FOR TITLE LOAN
21 PRODUCTS.--

22 A. A title lender may make title loan products
23 subject to the provisions of this section.

24 B. A title loan product shall be reduced to
25 writing, which shall include the following requirements:

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1 (1) the title lender agrees to make a loan of
2 money to the consumer, and the consumer agrees to give the
3 title lender a security interest in a motor vehicle owned by
4 the consumer;

5 (2) the consumer consents to the title lender
6 keeping possession of the certificate of title and perfecting
7 the title lender's lien on the motor vehicle;

8 (3) the stated contract rate of interest for a
9 title loan shall be:

10 (a) for a loan with a principal amount
11 of two thousand five hundred dollars (\$2,500) or less, no
12 greater than forty-five percent per annum simple interest; and

13 (b) for a loan with a principal amount
14 greater than two thousand five hundred dollars (\$2,500), no
15 greater than thirty-six percent per annum simple interest;

16 (4) the title lender shall not charge any
17 interest or fees not provided for in the Title Loan Act;

18 (5) the title loan shall be payable in
19 substantially equal monthly payments, provided that a title
20 loan shall have a maximum loan period of less than twelve
21 months and have the following minimum loan periods:

22 (a) sixty days for a loan with a
23 principal amount of two thousand five hundred dollars (\$2,500)
24 or less; and

25 (b) one hundred twenty days for a loan

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1 with a principal amount greater than two thousand five hundred
2 dollars (\$2,500);

3 (6) if there is an unpaid balance remaining at
4 the maturity of a title loan, the title lender shall offer and
5 the consumer may enter into a payment plan with a term of ten
6 months. The payment plan shall be fully amortized, shall
7 consist of ten substantially equal monthly payments and shall
8 not include any fees or charges other than interest charges
9 that shall not exceed an annual percentage rate of:

10 (a) for a payment plan with a principal
11 amount of two thousand five hundred dollars (\$2,500) or less,
12 no greater than forty-five percent per annum simple interest;
13 and

14 (b) for a payment plan with a principal
15 amount greater than two thousand five hundred dollars (\$2,500),
16 no greater than thirty-six percent per annum simple interest;

17 (7) the consumer has the exclusive right to
18 redeem the certificate of title by repaying all obligations
19 under the title loan product in full;

20 (8) upon completion by the consumer of all
21 obligations under a title loan product, the title lender shall
22 promptly release its security interest in the motor vehicle and
23 return the certificate of title to the consumer;

24 (9) the consumer has the right to rescind a
25 title loan product transaction by returning in cash, or through

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1 certified funds, one hundred percent of the amount advanced by
2 a title lender no later than 5:00 p.m. on the second day of
3 business conducted by the title lender following the execution
4 of the title loan product agreement. If a consumer exercises
5 the right of rescission pursuant to this paragraph, no interest
6 charge or fee for the rescinded transaction shall be charged to
7 the consumer and the title lender shall not charge or impose on
8 the consumer a fee for exercising the right of rescission. If
9 this paragraph is applicable, any interest or fee collected by
10 a title lender shall be returned in full to the consumer; and

11 (10) any assignee shall be obligated to the
12 terms of the title loan product agreement and all of its rights
13 and obligations.

14 C. The amount of a title loan shall not exceed
15 fifty percent of the fair market value of the motor vehicle. A
16 title lender shall not make a title loan to a consumer if the
17 monthly payment for the initial term of the title loan, when
18 combined with the principal amount and fees of any of the
19 consumer's outstanding payday or title loan products, exceeds
20 twenty-five percent of the consumer's gross monthly income.

21 D. Each title loan transaction shall be entered
22 into a database pursuant to Section 13 of the Title Loan Act.
23 Before entering into a title loan transaction, the lender shall
24 check the database pursuant to Section 13 of the Title Loan Act
25 to ensure the proposed title loan is in compliance with the

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1 Title Loan Act.

2 E. A title lender shall not enter into a new title
3 loan with a consumer who has been a party to three previous
4 title loan product transactions within the previous twelve-
5 month period.

6 F. A consumer may make payments in any amount on a
7 title loan product at any time before maturity without
8 additional fees.

9 G. After each payment is made, in full or in part,
10 on a title loan product, the title lender shall give to the
11 person making the payment a signed, dated receipt showing the
12 amount paid, the amount credited toward fees and the principal
13 and the balance due.

14 H. The director shall determine which languages in
15 addition to English and Spanish, if any, that title loan
16 product agreements and title loan disclosures shall be
17 translated into and made available to consumers. Prior to the
18 consummation of a title loan, the title lender shall provide to
19 the consumer a copy of the title loan agreement and the title
20 loan disclosure in the available language selected by the
21 consumer.

22 I. The disclosure of the credit terms of a title
23 loan product agreement shall be according to and governed by
24 the requirements of 12 C.F.R. 226, known as "Regulation Z" of
25 the federal Truth in Lending Act. The definitions and

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1 requirements of that regulation and commentary shall apply to
2 title loan products as if those provisions are fully set out in
3 this section.

4 Section 7. [NEW MATERIAL] TITLE LOAN PRODUCTS--PERMITTED
5 CHARGES.--A title lender shall not charge or receive from a
6 consumer, directly or indirectly, interest, fees or charges for
7 a title loan product except as follows:

8 A. the stated contract rate of interest for a title
9 loan shall be:

10 (1) for a loan with a principal amount of two
11 thousand five hundred dollars (\$2,500) or less, no greater than
12 forty-five percent per annum simple interest; and

13 (2) for a loan with a principal amount greater
14 than two thousand five hundred dollars (\$2,500), no greater
15 than thirty-six percent per annum simple interest;

16 B. the title loan shall be payable in substantially
17 equal monthly payments, provided that a title loan shall have a
18 maximum loan period of less than twelve months and have the
19 following minimum loan periods:

20 (1) sixty days for a loan with a principal
21 amount of two thousand five hundred dollars (\$2,500) or less;
22 and

23 (2) one hundred twenty days for a loan with a
24 principal amount greater than two thousand five hundred dollars
25 (\$2,500);

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1 C. upon the execution of a new title loan
2 agreement, the licensee may impose an additional administrative
3 fee of not more than one dollar (\$1.00) per executed new title
4 loan agreement as necessary to cover the cost to the licensee
5 of verification pursuant to Section 13 of the Title Loan Act,
6 which fee is fully earned and nonrefundable at the time a title
7 loan agreement is executed and payable in full at the end of
8 the term of the title loan or upon prepayment of the title loan
9 unless a title loan is rescinded pursuant to Section 6 of the
10 Title Loan Act;

11 D. if there are insufficient funds to pay a check
12 or other type of debit on the date of presentment by the title
13 lender, a title lender may charge a consumer a fee not to
14 exceed fifteen dollars (\$15.00). Only one fee may be collected
15 by a title lender on a check or debit authorization. A lender
16 shall not present a check or debit authorization more than one
17 time; and

18 E. after default and repossession of the motor
19 vehicle securing a title loan product, the title lender may
20 charge a consumer actual and reasonable expenses incurred in
21 taking possession of the motor vehicle, preparing the motor
22 vehicle for sale and selling the motor vehicle. These
23 reasonable expenses shall not exceed the lesser of ten percent
24 of the sales price of the motor vehicle or one hundred dollars
25 (\$100).

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1 Section 8. [NEW MATERIAL] PAYMENT PLANS--NOTICE--TERMS.--

2 A. The title lender shall provide written notice by
3 mail to the consumer of the option to enter into a payment plan
4 at least seven days before the title loan's maturity date. The
5 written notice shall:

6 (1) state the date by which the consumer must
7 act to enter into a payment plan;

8 (2) state the remaining principal balance
9 owed;

10 (3) inform the consumer that the consumer may
11 pay the balance owed over a period of ten months, provide the
12 contract interest rate for the payment plan and provide an
13 estimated monthly payment amount; and

14 (4) be in English; provided that if the
15 consumer elected to receive documents in another language
16 pursuant to Section 6 of the Title Loan Act at the time the
17 consumer entered into the title loan agreement, a copy of the
18 notice shall also be provided to the consumer in that language.

19 B. A payment plan shall provide for a term of ten
20 months, shall be fully amortized, shall consist of ten
21 substantially equal monthly payments and shall not include any
22 fees or charges other than interest charges that shall not
23 exceed an annual percentage rate of:

24 (1) for a payment plan with a principal amount
25 of two thousand five hundred dollars (\$2,500) or less, no

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1 greater than forty-five percent per annum simple interest; or
2 (2) for a payment plan with a principal amount
3 greater than two thousand five hundred dollars (\$2,500), no
4 greater than thirty-six percent per annum simple interest.

5 Section 9. [NEW MATERIAL] DEFAULT--REPOSSESSION AND SALE
6 OF MOTOR VEHICLE.--

7 A. A title lender shall collect on a title loan in
8 default in a professional, fair and lawful manner and shall
9 comply with the requirements and prohibitions set forth in 15
10 U.S.C. 1692c-1692f of the federal Fair Debt Collection
11 Practices Act.

12 B. Upon default of a title loan product, a consumer
13 shall deliver the motor vehicle to the title lender at the
14 location specified by the title loan product agreement.

15 C. If a consumer fails to deliver the motor vehicle
16 to the title lender upon default, the title lender shall serve
17 the consumer a notice of default by certified mail at the
18 consumer's last known address of record.

19 D. A title lender may take possession of the motor
20 vehicle ten business days after service of a notice of default
21 through an agent that is licensed by the state to repossess.

22 E. Prior to authorizing repossession of the motor
23 vehicle, the title lender shall afford the consumer an
24 opportunity by mail and telephone to make the motor vehicle
25 available to the title lender at a place, date and time

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1 reasonably convenient to the title lender and the consumer.

2 F. Upon taking possession of the motor vehicle, the
3 title lender shall provide notice to the consumer of the
4 lender's intent to dispose of the motor vehicle and shall
5 dispose of the motor vehicle in a commercially reasonable
6 manner. The notice and sale shall be in conformance with
7 Chapter 55, Article 9 NMSA 1978. At any time prior to the
8 sale, the title lender shall permit the consumer to redeem the
9 motor vehicle by tendering cash, a money order or certified
10 check for the amount outstanding. Nothing in the Title Loan
11 Act precludes a consumer from purchasing the motor vehicle at a
12 sale.

13 G. Within thirty days after the sale of the motor
14 vehicle, the title lender shall deliver to the consumer all
15 proceeds from the sale of the motor vehicle less unpaid
16 principal, interest and fees owed under a title loan product
17 and the actual and reasonable expenses incurred by the title
18 lender in taking possession of, preparing for sale and selling
19 the motor vehicle, as provided in Section 7 of the Title Loan
20 Act; provided that the lender shall not use more than one
21 month's post default interest in this calculation.

22 H. After repossession, a title lender shall make
23 all personal contents from the motor vehicle available to the
24 consumer for a period of at least ninety days.

25 I. A title lender shall comply with Chapter 55,

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1 Article 9 NMSA 1978.

2 J. In taking possession of and selling the motor
3 vehicle, the title lender shall at all times proceed in a
4 commercially reasonable manner.

5 K. Except as provided in Subsection L of this
6 section, a consumer who does not redeem a certificate of title
7 is not personally liable to the title lender for any amount
8 owed under the title loan product, and the title lender shall
9 look solely to the motor vehicle for satisfaction of any amount
10 owed under the title loan product agreement.

11 L. A consumer who obtains a title loan product from
12 a title lender under false pretenses by hiding or not
13 disclosing the existence of a known valid prior lien or
14 security interest affecting the motor vehicle, who acts in any
15 other fraudulent manner with regard to the motor vehicle or who
16 intentionally diminishes its value is personally liable to the
17 title lender for the full amount owed pursuant to the title
18 loan product agreement, including expenses incurred by the
19 title lender in connection with the loan.

20 M. A prevailing consumer is entitled to reasonable
21 attorney fees and costs incurred in an action against a title
22 lender.

23 Section 10. [NEW MATERIAL] TITLE LOAN PRODUCTS--
24 PROHIBITED ACTS.--A title lender shall not:

25 A. enter into a title loan product agreement with a
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1 person under the age of eighteen years;

2 B. enter into a new title loan with a consumer who
3 has completed three title loan transactions with any title
4 lender in New Mexico in the preceding twelve-month period;

5 C. threaten or intimidate a consumer or threaten to
6 use or request the use of criminal process in this or another
7 state to collect on a title loan product;

8 D. use a device or agreement that would have the
9 effect of charging or collecting more fees, charges or interest
10 than that allowed by law by entering into a different type of
11 transaction with the consumer such as a sale-leaseback or other
12 subterfuge that has that effect;

13 E. sell or otherwise charge for any type of
14 insurance in connection with a title loan product agreement;

15 F. charge a prepayment penalty;

16 G. charge a fee to cash a check representing the
17 proceeds of a title loan;

18 H. charge a late fee or delinquency charge if a
19 consumer fails to repay a title loan product on time;

20 I. fail to exercise reasonable care in the
21 safekeeping of a certificate of title;

22 J. refuse to accept partial payments toward
23 satisfying an obligation owed under a title loan product
24 agreement;

25 K. assign or attempt to assign a consumer's

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1 personal check to a third party unless for collection purposes;

2 L. accept collateral for a title loan product other
3 than the motor vehicle that is the subject of the title
4 provided as the initial collateral for that title loan or
5 require a consumer to provide a guaranty from another person
6 for a title loan product;

7 M. accept a certificate of title to a mobile home,
8 motor home or recreational vehicle as collateral for a title
9 loan product;

10 N. include any of the following provisions in a
11 title loan product agreement:

12 (1) a hold harmless clause;

13 (2) a confession of judgment clause or power
14 of attorney;

15 (3) an assignment of or order for payment of
16 wages or other compensation for services;

17 (4) a waiver of claims for punitive damages;

18 (5) a provision in which the consumer agrees
19 not to assert a claim or defense arising out of the title loan
20 product agreement;

21 (6) a waiver of a provision of the Title Loan
22 Act;

23 (7) a waiver of the right to enter into a
24 payment plan;

25 (8) a waiver of any right secured by New

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1 Mexico law;

2 (9) a mandatory arbitration clause;

3 (10) a provision allowing the title lender to
4 charge the consumer attorney fees for collection efforts; or

5 (11) a provision allowing the title lender to
6 charge the consumer post-default interest, except as allowed by
7 the Title Loan Act;

8 O. refuse to return:

9 (1) the certificate of title as required by
10 the Title Loan Act;

11 (2) surplus proceeds from the sale of the
12 motor vehicle securing a title loan product; or

13 (3) personal property left in the motor
14 vehicle at the time of repossession within ninety days after
15 repossession;

16 P. make a title loan product contingent on the
17 purchase of insurance or other goods or services from the title
18 lender, but nothing in this section shall require a title
19 lender to enter into a title loan product secured by an
20 uninsured motor vehicle;

21 Q. offer, arrange, act as an agent for or assist a
22 third party in any way in the making of a title loan product
23 unless the third party complies with all applicable federal and
24 state laws and regulations;

25 R. knowingly enter into a title loan product

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1 agreement with a consumer who lacks the capacity to consent;

2 S. own or operate a vehicle sales facility or
3 pawnshop;

4 T. use an agency agreement or partnership agreement
5 as a scheme or contrivance to circumvent the application of the
6 provisions of the Title Loan Act to a title loan. For the
7 purposes of this subsection:

8 (1) "agency agreement" means an agreement
9 between in-state entities and a banking corporation, savings
10 and loan association or credit union operating under the laws
11 of the United States or of any state whereby the in-state agent
12 holds a predominant economic interest in the revenues generated
13 by a title loan product made to New Mexico residents; and

14 (2) "partnership agreement" means an agreement
15 between in-state entities and a banking corporation, savings
16 and loan association or credit union operating under the laws
17 of the United States or of any state whereby the in-state
18 partner holds a predominant economic interest in the revenues
19 generated by a title loan product made to New Mexico residents;

20 U. advertise using the words "interest-free loans"
21 or "no finance charge"; or

22 V. make any type of loan other than a title loan
23 product from the premises of a title lender's office.

24 Section 11. [NEW MATERIAL] REQUIRED DISCLOSURES.--A title
25 lender shall provide a notice immediately above the consumer's

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1 signature on each title loan agreement or renewed title loan
2 agreement in at least twelve-point bold type using the
3 following language:

4 "(1) A title loan is not intended to meet long-term
5 financial needs.

6 (2) You should use a title loan only to meet short-
7 term cash needs.

8 (3) If you default on this title loan, you may lose
9 your vehicle.

10 (4) A title loan is a high-cost loan. You should
11 consider what other lower-cost loans are available to you.

12 (5) If you cannot fully repay your loan when due,
13 you have a right to enter into a payment plan requiring full
14 payment within ten months, in relatively equal monthly
15 payments. If you enter into a payment plan, you will be
16 responsible for interest on the outstanding principal
17 balance.".

18 Section 12. [NEW MATERIAL] DUTIES OF DIVISION.--

19 A. The division shall:

20 (1) maintain a list of title lenders that is
21 available to the general public; and

22 (2) establish a complaint process whereby an
23 aggrieved consumer or other person may file a complaint against
24 a title lender or an unlicensed person that violates a
25 provision of the Title Loan Act.

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- 1 B. The division may:
- 2 (1) hold hearings, make findings of fact or
- 3 conclusions of law;
- 4 (2) issue cease and desist orders;
- 5 (3) refer the matter to the appropriate law
- 6 enforcement agency for prosecuting a violation; or
- 7 (4) seek injunctive or other relief in
- 8 district court or revoke or suspend a license granted under the
- 9 Title Loan Act.

10 C. The division shall compile a report for the

11 legislature on October 1 each year beginning in 2011 detailing

12 title loan product statistics, including data adequate to

13 obtain an accurate understanding of the practices and legal

14 compliance of all title lenders in the state. Annual reports

15 shall be made available to interested parties and the general

16 public. Consistent with state law, the report shall include,

17 at a minimum, nonidentifying consumer data from the calendar

18 year ending December 31 of the previous year, including:

- 19 (1) the total number and dollar amount of
- 20 title loans and payment plans entered into by consumers;
- 21 (2) the total number and dollar amount of
- 22 title loans and payment plans outstanding;
- 23 (3) the average number of days of a title
- 24 loan, including statistics detailing the percentage of
- 25 consumers who elect to enter into a payment plan;

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1 (4) the number of title loans and payment
2 plans in default, the number of repossessions by title lenders
3 for default and the average amount of the loans in default or
4 loans satisfied by repossession;

5 (5) the total dollar amount of the net write-
6 offs and the net recoveries of a title lender;

7 (6) the minimum, maximum and average dollar
8 amounts of title loans and payment plans entered into by
9 consumers;

10 (7) the average number of transactions and
11 average aggregate title loan amount entered into per consumer
12 each year;

13 (8) the number of consumers in default who
14 deliver the motor vehicle to the title lender;

15 (9) the number of consumers in default who
16 redeem the motor vehicle after it has been repossessed but
17 before the sale of the motor vehicle; and

18 (10) the average amount of time for a title
19 lender to return the certificate of title to a consumer who has
20 paid the loan in full.

21 Section 13. [NEW MATERIAL] DATABASE--VERIFICATION.--

22 A. Before entering into a title loan agreement with
23 a consumer, a title lender shall use a commercially reasonable
24 method of verification to verify that the proposed loan
25 agreement is permissible under the provisions of the Title Loan

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1 Act.

2 B. No later than November 1, 2009, the director
3 shall certify that one or more consumer reporting service
4 databases are commercially reasonable methods of verification.
5 The list of consumer reporting services that the director has
6 certified as providing commercially reasonable methods of
7 verification shall be posted on the division's web site and
8 shall be mailed to each licensed title lender by first class
9 mail at the address of record as shown on the division's
10 licensing files.

11 C. Each title lender who makes title loans shall
12 comply with Subsection A of this section no later than November
13 30, 2009.

14 D. A consumer seeking a title loan may make a
15 direct inquiry to the consumer reporting service to request a
16 more detailed explanation of the basis for a consumer reporting
17 service's determination that the consumer is ineligible for a
18 new title loan, and the consumer reporting service shall
19 provide a reasonable response to the consumer.

20 E. In certifying a commercially reasonable method
21 of verification, the director shall ensure that the certified
22 database:

23 (1) provides real-time access through an
24 internet connection or, if real-time access through an internet
25 connection becomes unavailable due to technical problems

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1 incurred by the consumer reporting service, through alternative
2 verification mechanisms, including verification by telephone;

3 (2) is accessible to the division and to title
4 lenders in real time in order to ensure compliance with the
5 Title Loan Act regardless of where the consumer requests a
6 title loan in New Mexico and in order to provide any other
7 information the director deems necessary;

8 (3) requires title lenders to enter whatever
9 information is required by the Title Loan Act or by a rule
10 adopted under that act, including:

11 (a) the name, address and social
12 security number or tax identification number of the consumer;

13 (b) the gross monthly income of the
14 consumer;

15 (c) information on the motor vehicle
16 securing the loan, including the vehicle identification number,
17 year, make, model and fair market value;

18 (d) the amount of the loan;

19 (e) the interest rate charged;

20 (f) the due date of the loan;

21 (g) the date the title loan product was
22 paid off;

23 (h) the date of the return of title;

24 (i) the date of release of lien;

25 (j) if a payment plan is entered, the

1 date of the payment plan agreement and payment terms;

2 (k) the date of a notice of default;

3 (l) the fees charged in the event of
4 default;

5 (m) the date of repossession;

6 (n) the date of redemption by the
7 consumer;

8 (o) the title lender's expenses prior to
9 sale;

10 (p) the date of sale and method of sale;

11 (q) the sale price of the motor vehicle
12 after repossession;

13 (r) the surplus owed to the borrower;

14 (s) the date the surplus was paid to the
15 borrower; and

16 (t) the number of loans per borrower
17 within a twelve-month period;

18 (4) contains a real-time regulator interface
19 that allows the division access to the consumer reporting
20 service database for the required monitoring and reporting
21 function, including the ability to determine consumer
22 eligibility and to generate reports for title lender
23 examinations, regulatory reporting and program monitoring;

24 (5) provides title lenders with no more than a
25 statement that a consumer is eligible or ineligible for a new

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1 title loan and the reason for the determination;

2 (6) provides adequate safeguards to ensure
3 that consumer information contained in the database is kept
4 strictly confidential;

5 (7) provides sufficient information to enable
6 a title lender to determine whether a proposed title loan would
7 meet the requirements for title loans set forth in the Title
8 Loan Act;

9 (8) ensures that information submitted to the
10 certified database is kept confidential and shall not be
11 released or otherwise made available to the public;

12 (9) demonstrates a working system to the
13 division prior to the certification of the database; and

14 (10) is generated by a registered consumer
15 reporting service that is subject to the applicable rules and
16 regulations applied by the federal trade commission under the
17 federal Fair Credit Reporting Act.

18 F. A title lender shall update the certified
19 database by entering all information required under Paragraph
20 (3) of Subsection E of this section at the time that:

21 (1) a title loan is made;
22 (2) a consumer elects to enter into a payment
23 plan;

24 (3) a consumer's title loan product is paid in
25 full; or

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1 (4) a title lender determines a title loan
2 product is in default.

3 G. A title lender may rely on the information
4 contained in the certified database as accurate and is not
5 subject to any penalty or liability as a result of relying on
6 inaccurate information contained in the database.

7 H. In determining whether a consumer reporting
8 service database should be certified as a commercially
9 reasonable method of verification, the director shall consider
10 whether the consumer reporting service is adequately
11 capitalized, demonstrates the resources and the ability to
12 perform the services required pursuant to this section and has
13 appropriate surety to ensure performance of its obligations
14 pursuant to this section and to protect claimants reasonably in
15 the event that actions or inactions on the part of the consumer
16 reporting service result in damages to title lenders or
17 consumers.

18 I. The provisions of Section 14-7-1 NMSA 1978 shall
19 not apply to access by the division to information for purposes
20 of compliance monitoring or preparation of reports contained in
21 a certified database established pursuant to this section.

22 Section 14. [NEW MATERIAL] VIOLATION OF ACT CONSTITUTES
23 AN UNFAIR TRADE PRACTICE.--A violation of the Title Loan Act
24 constitutes an unfair or deceptive trade practice pursuant to
25 the Unfair Practices Act.

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1 Section 15. ~~[NEW MATERIAL]~~ TITLE LOAN ACT ADMINISTRATION
2 FUND CREATED--PURPOSE.--The "Title Loan Act administration
3 fund" is created as a nonreverting fund in the state treasury.
4 The fund consists of fees collected pursuant to the Title Loan
5 Act, money that is appropriated or donated or that otherwise
6 accrues to the fund and income from investment of the fund.
7 The division shall administer the fund, and money in the fund
8 is appropriated to the division to enforce the Title Loan Act.
9 Money in the fund shall be disbursed on warrants signed by the
10 secretary of finance and administration pursuant to vouchers
11 signed by the director or the director's authorized
12 representative. Any unexpended or unencumbered balance
13 remaining at the end of a fiscal year shall not revert to the
14 general fund.

15 Section 16. Section 58-15-3 NMSA 1978 (being Laws 1955,
16 Chapter 128, Section 3, as amended) is amended to read:

17 "58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--
18 PENALTY.--

19 A. A person shall not engage in the business of
20 lending in amounts of two thousand five hundred dollars
21 (\$2,500) or less for a loan without first having obtained a
22 license from the director. Nothing contained in this
23 subsection shall restrict or prohibit a licensee under the New
24 Mexico Small Loan Act of 1955 from making loans in any amount
25 under the New Mexico Bank Installment Loan Act of 1959 in

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1 accordance with the provisions of Section 58-7-2 NMSA 1978.

2 B. Nothing in the New Mexico Small Loan Act of 1955
3 shall apply to a person making individual advances of two
4 thousand five hundred dollars (\$2,500) or less under a written
5 agreement providing for a total loan or line of credit in
6 excess of two thousand five hundred dollars (\$2,500), or to a
7 person making a title loan pursuant to the Title Loan Act.

8 C. A banking corporation, savings and loan
9 association or credit union operating under the laws of the
10 United States or of a state shall be exempt from the licensing
11 requirements of the New Mexico Small Loan Act of 1955, nor
12 shall that act apply to business transacted by any person under
13 the authority of and as permitted by any such law nor to any
14 bona fide pawnbroking business transacted under a pawnbroker's
15 license nor to bona fide commercial loans made to dealers upon
16 personal property held for resale. Nothing contained in the
17 New Mexico Small Loan Act of 1955 shall be construed as
18 abridging the rights of any of those exempted from the
19 operations of that act from contracting for or receiving
20 interest or charges not in violation of an existing applicable
21 statute of this state.

22 D. The provisions of Subsection A of this section
23 apply to:

24 (1) a person who owns an interest, legal or
25 equitable, in the business or profits of a licensee and whose

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1 name does not specifically appear on the face of the license,
2 except a stockholder in a corporate licensee; and

3 (2) a person who seeks to evade its
4 application by any device, subterfuge or pretense whatsoever,
5 including but not thereby limiting the generality of the
6 foregoing:

7 (a) the loan, forbearance, use or sale
8 of credit (as guarantor, surety, endorser, comaker or
9 otherwise), money, goods or things in action;

10 (b) the use of collateral or related
11 sales or purchases of goods or services or agreements to sell
12 or purchase, whether real or pretended;

13 (c) receiving or charging compensation
14 for goods or services, whether or not sold, delivered or
15 provided; and

16 (d) the real or pretended negotiation,
17 arrangement or procurement of a loan through any use or
18 activity of a third person, whether real or fictitious.

19 E. A person, copartnership, trust or a trustee or
20 beneficiary thereof or an association or corporation or a
21 member, officer, director, agent or employee thereof who
22 violates or participates in the violation of a provision of
23 Subsection A of this section is guilty of a petty misdemeanor
24 and upon conviction shall be sentenced pursuant to the
25 provisions of Subsection B of Section 31-19-1 NMSA 1978. A

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1 contract or loan in the making or collection of which an act is
2 done that violates Subsection A or D of this section is void
3 and the lender has no right to collect, receive or retain any
4 principal, interest or charges whatsoever."

5 Section 17. SEVERABILITY.--If any part or application of
6 this act is held invalid, the remainder or its application to
7 other situations or persons shall not be affected.

8 Section 18. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is November 1, 2009.